

Taxation on e-commerce and digital-based transactions in Vietnam

On 29 September 2021, the Ministry of Finance has issued Circular 80/2021/TT-BTC (“**Circular 80**”) detailing the implementation of the Tax Administration Law No. 38/2019/QH14 dated 13 June 2019 and Decree 126/2020/ND-CP dated 19 November 2020. Apart from the guidance on general tax administration, the Circular has a separate chapter which sets out important guidelines on tax administration for overseas suppliers who do not have a permanent establishment in Vietnam but conducting e-commerce and/or digital based businesses and having income arising in Vietnam (hereinafter referred to as “**Overseas Suppliers**”). This Circular will come into effect from 1 January 2022.

We summarise some notable guidance concerning taxation of e-commerce and digital-based business of Overseas Suppliers as follows:

1. Definition of the in-scope e-commerce and digital based business activities

- “*E-commerce activities*” are the conduct of part or the whole process of commercial activities by electronic means connected to the Internet, mobile telecommunication network or other open networks.
- “*Digital-based business activities*” are business activities of business entities through an intermediary digital system to connect with customers, all connection activities take place in a digital environment.

2. Tax registration, declaration and payment

- General Department of Taxation (“**GDT**”) is the authority that administers the taxation of e-commerce/digital-based business of Overseas Suppliers.
- Tax registration by Overseas Suppliers is not mandatory. It is optional for Overseas Suppliers to register or not to register to declare and pay the applicable taxes on their income arising from Vietnam.
- Tax registration, declaration and payment by Overseas Suppliers who wish to register should be carried out through an e-portal of the GDT, which is soon to be made available.
- Registered Overseas Suppliers should declare and pay the applicable taxes on income arising from their e-commerce and digital-based transactions in Vietnam, on a quarterly basis.
- For business-to-business (“**B2B**”) e-commerce and digital-based transactions conducted by Overseas Suppliers who choose not register to self-declare and pay tax in Vietnam, Vietnamese organizational customers will be responsible for declaring, withholding and remitting the withheld taxes to the local tax authority on behalf of Overseas Suppliers as currently required by the prevailing foreign contractor tax (“**FCT**”) rules.
- For business-to-consumer (“**B2C**”) e-commerce and digital-based transactions conducted by Overseas Suppliers who do not register to self-declare and pay tax in Vietnam, Vietnamese commercial banks and Vietnamese payment intermediaries must declare, withhold and remit the applicable taxes to the local tax authority on behalf of non-registered Overseas Suppliers, on a monthly basis.

3. Tax computation

- Applicable deemed tax rates will depend on the type of activities undertaken and the nature of the fees charged by Overseas Suppliers. In case the applicable deemed tax rates cannot be separately determined for each type of in-scope activities, the highest deemed tax rates will apply.

4. Tax treaty considerations

- Circular 80 generally provides that Overseas Suppliers from countries or territories that have signed an agreement on avoidance of double taxation with Vietnam may apply for tax treaty exemption or reduction by following the procedures provided at Article 62 of this Circular. However, Article 62 of the Circular does not have specific treaty claim procedures for Overseas Suppliers to claim treaty reliefs with respect to income derived from B2C e-commerce and/or digital-based business transactions.

5. Considerations for commercial banks and payment intermediaries

- Regarding withholding obligation of commercial banks and payment intermediaries with respect to B2C transactions conducted by non-registered Overseas Suppliers, the GDT will notify head offices of all commercial banks or payment intermediaries of the names and website addresses of non-registered Overseas Suppliers. Head offices of commercial banks or payment intermediaries should inform and instruct their respective branches to withhold taxes from the relevant B2C transactions.
- For card payments or other forms of payment where commercial banks or payment intermediaries cannot withhold the applicable taxes on behalf of non-registered Overseas Suppliers, the commercial banks and payment intermediaries shall be responsible for monitoring the amounts transferred to non-registered Overseas Suppliers and reporting to the GDT by the 10th date of each month, using a prescribed form.
- Withholding and reporting obligations of commercial banks and payment intermediaries will start from the time the GDT sends a written notice to their head offices.

Please contact KPMG for further insights and advice on how to comply with these new requirements and mitigate any potential tax risks this Circular may have on your business in Vietnam.

Contact us

Hanoi

46th Floor, Keangnam Landmark 72,
E6 Pham Hung, Me Tri, Nam Tu Liem

T: +84 (24) 3946 1600

Ho Chi Minh City

10th Floor, Sun Wah Tower,
115 Nguyen Hue, Ben Nghe, District 1

T: +84 (28) 3821 9266

Da Nang

D3, 5th Floor, Indochina Riverside Towers,
74 Bach Dang, Hai Chau I, Hai Chau

T: +84 (236) 351 9051

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Email: kpmghcmc@kpmg.com.vn